



TC01468

Appeal number: TC/2011/03070

*Income tax – Application for enquiry closure notice – s 28A TMA 1970 –
Joint working of enquiries into income tax, VAT and employer compliance –
Investigation covering several taxes and closure application covering only
one aspect of the enquiries - Whether income tax enquiry should be closed*

FIRST-TIER TRIBUNAL

TAX

Mrs SAU KWAN HUAN

Applicant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: MR PETER KEMPSTER (JUDGE)
MR JOHN RITCHIE (MEMBER)**

Sitting in public at 45 Bedford Square, London WC1 on 19 July 2011

Mr Michael Feng (Feng & Co) for the Applicant

Mr Paul Reeve (HMRC Appeals Unit) for the Respondents

DECISION

1. On 2 March 2010 the Respondents (“HMRC”) opened an enquiry into the self-assessment income tax return of the Applicant (“Mrs Huan”) for the tax year 2008-09 pursuant to s 9A Taxes Management Act 1970 (“TMA”). On 18 April 2011 the Mrs Huan applied to the Tribunal for an enquiry closure notice pursuant to s 28A TMA.
2. Section 28A(4) provides, “The taxpayer may apply to the [tribunal] for a direction requiring an officer of [HMRC] to issue a closure notice within a specified period.” Section 28A(6) provides, “The tribunal shall give the direction applied for unless satisfied that there are reasonable grounds for not issuing a closure notice within a specified period.”
3. The Tribunal heard evidence from Mrs Huan and, for HMRC, Mrs Christine Daniells (HMRC officer leading the s 9A enquiry).
4. Ms Daniells’ evidence was:
 - (1) Her colleagues dealing with VAT compliance had investigated takeaway meal sales from Mrs Huan’s business and as a result of test purchases in October 2009 had evidence leading them to suspect significant understatement of sales. That led Ms Daniells to have concerns about unreported sales in the business accounts used for income tax reporting purposes.
 - (2) On 21 June 2010 Mrs Huan and her then agent attended a meeting with Mrs Daniells and her VAT compliance colleague. Mrs Huan had stated that the business had been run on the same basis since approximately 2000. Sources of capital amounting to £10,000 were unexplained. Copies of the note of the meeting were provided to Mrs Huan and amendments invited but no comments were received.
 - (3) Mrs Huan had accepted that some takings had not been recorded. There had been unresolved negotiation as to the appropriate amount of adjustment to the accounts. In April 2011 HMRC had written requesting further information and when Mr Feng objected to the extent of information requested HMRC had reissued the request (on 11 July 2011) in shortened form.
5. For HMRC Mr Reeve submitted:
 - (1) Information has been requested by HMRC to check apparent irregularities in the records underlying the 2008-09 income tax return. Mrs Huan has admitted irregularities in record keeping but the extent of those irregularities has not yet been established.
 - (2) HMRC are not yet in receipt of sufficient information to form a view regarding the tax liability of Mrs Huan for the year under enquiry. There are ongoing enquiries into other aspects of Mrs Huan’s tax affairs – for example, employer compliance - and the results of those enquiries could affect the profits to be assessed. To issue a closure notice before the results of those enquiries are known could prejudice the collection of taxes rightfully due.

6. For Mrs Huan Mr Feng submitted:

5 (1) The enquiry which was the subject of the application related to the tax year 2008-09. The accounts that formed the basis for that tax year were those for the year ended 31 July 2008. The test purchases made by the VAT officers were conducted in the year ended 31 July 2010, and the results of any necessary adjustment might be relevant to the income tax return for the tax year 2010-11. But any such adjustment was not relevant to the 2008-09 tax return, which was the subject of the enquiry for which a closure notice was requested.

10 (2) HMRC were keeping the s 9A enquiry open pending the outcome of the VAT enquiry. But as stated above, any adjustments resulting from the VAT enquiry would not affect the income tax return that was the subject of the s 9A enquiry. If subsequently HMRC were not satisfied that the 2008-09 return was correct then the correct course for them was to issue discovery assessments under s 29 TMA at that time.

15 (3) Mrs Huan's acceptance that there were unrecorded takings was confined to the period February 2009 to October 2010. The business accounts for that period are not relevant to the 2008-09 income tax return.

Consideration

20 7. It is increasingly common for HMRC to work enquiries simultaneously across several areas such as income tax, VAT, and employer compliance. That is a sensible approach which attempts to minimise the disruption to a taxpayer's business by avoiding the same questions being asked on different occasions by separate enquiry teams. However, there are separate legislative provisions applicable to the different types of enquiry and so an application to this Tribunal must be considered in the context of the part of the exercise that is covered by the application.

8. HMRC are investigating Mrs Huan's tax affairs in relation to income tax, VAT and employer compliance for a period extending over several years. Mrs Huan's application to this Tribunal is made under s 28A TMA and concerns the s 9A income tax enquiry relating to the tax year 2008-09.

30 9. From Mrs Huan's evidence we are unclear what she is prepared to concede concerning unrecorded sales. But from the documents available to us we conclude (a) she has stated to HMRC that the business had been run on the same basis since approximately 2000; and (b) there were unrecorded sales in 2009. From that it is reasonable for HMRC to draw the inference that the turnover shown in the business accounts for periods prior to 2009 (as well as 2009) may be inaccurate.

40 10. It would not be reasonable for HMRC to contend that the s 9A enquiry must remain open for the duration of HMRC's investigation of the VAT records of the business. If Mrs Huan could show that the questions being asked by HMRC were not pertinent to her income tax position then HMRC might be in a difficult position in attempting to resist the closure notice application. So if the only open items were related to matters particular to the VAT position of her business – say, whether certain supplies of food were zero rated or standard rated – then we would have some

5 sympathy with her application for the s 9A enquiry to be directed to be closed. However, at least some of HMRC's unanswered questions fundamentally affect the s 9A enquiry – for example, the accuracy of the turnover stated in the business accounts. We consider that HMRC are not yet in a position to form a judgment about the income tax due for the 2008-09 tax year, and it would be premature to order closure of the enquiry at this time. Accordingly, as communicated to the parties at the conclusion of the hearing, we will refuse the application.

10 11. It is open to Mrs Huan to make a fresh application for a closure notice in the future. If at that time she has answered all HMRC's legitimate questions pertaining to her income tax affairs for the 2008-09 tax year then, even if some points peculiar to the VAT enquiry remain open, the Tribunal may be persuaded that it is not reasonable for HMRC to keep open the s 9A enquiry. But that is not the state of affairs as of the date of this hearing.

Decision

15 12. The Application is REFUSED.

20 13. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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TRIBUNAL JUDGE
RELEASE DATE: 22 September 2011

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